

231354

unfair when someone does not keep their certified records and they are not turned in. That is the objective of the bill.

SEN. ELLIS agreed there is a potential problem. Obviously, the contractors think there is also, but the solution he has trouble with. It seems to him SEN. COCCHIARELLA is correct that the ability to put this information on disk is available. But we cannot expect these departments to do that because that would be a bigger job than filing all this. The responsibility should be for the contractors to have these disks available and if somebody blows the whistle on them they should have to provide that disk within the time frames that they have to meet. That is how to solve this problem if we want a record-keeping solution.

SEN. MCNUTT stated he did not know if the Committee received enough information from the contractors who are doing payroll on computers. He didn't think it would be much of a problem to send this information in on a disk.

SEN. KEATING mentioned that is not in this bill.

Substitute Motion/Vote: SEN. ELLIS made a substitute motion that SB 425 BE TABLED. Substitute motion carried 6-3.

HEARING ON SB 432

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Proponents: Brendon Rohan, Montana Liability Coalition
Chris Gallus, Montana Chamber of Commerce
Matthew Quinn, Jr., Asarco

Opponents: Roger Sullivan, Attorney, Representing Mine
Workers and Families
Don Judge, AFL-CIO
Gene Fenderson, Montana Joint Heavy & Highway
Committee
Alice Priest, Representing Self, Libby
Gayla Benefield, Representing Self, Libby
Dennis Day, Representing Self, Libby
Les Skramstad, Representing Self, Libby
LeRoy Thom, Representing Self, Libby

Al Smith, Montana Trial Lawyer's Association
Nancy Butler, State Fund
Norita Skramstad, Representing Self, Libby
Representative Scott Orr, HD 82, Libby

Informal Testimony: Jacqueline Lenmark, American Insurance
Association

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 31, Stevensville, conveyed this legislation is to provide occupational disease benefits to otherwise qualified claimants who suffer from occupational related diseases but whose claims are currently time barred.

This bill allows workers or their beneficiaries who are last employed in the State of Montana prior to July 1, 1979 to bring claims for occupational disease benefits within three years from the effective date of this act, or through reasonable diligence could be discovered when suffering from an occupational disease. This same group of workers or their beneficiaries will have the right to file for occupational disease benefits if, within one year, after passage of this act, they discover they are suffering from an occupational related disease. In this case the Department of Labor is permitted to waive the claim filing period for an additional two years which is consistent current occupational disease statute, prescribing the time limits within which claims must be filed.

This legislation was brought about for two reasons. First, the recognition for the time limitations applicable to the workers who last worked in the State of Montana prior to July 1, 1979 did not recognize there are many disease processes which have extended leniency periods. With the actual physical symptoms of a disease not becoming apparent until many years after the worker suffered his or her exposure to the toxic substance, asbestos. As a result, although workers contracted occupational related diseases, which under normal and expected circumstances should have fallen in the coverage of Montana's Occupational Disease Act. Because of the time limitations imposed at the time the workers were prohibited from seeking occupational disease benefits.

It is a policy of Montana that when workers are injured or diseased within the scope and course of their employment, they are entitled to avail themselves to the Occupational Disease Act. It is intended to be a no-fault system readily available to the worker providing benefits on a timely manner without reliance upon attorneys or the court system. This bill is intended to grant this particular group of workers the right to pursue occupational disease benefits in accordance with the policy of the State of Montana. This legislation also arises out of the Supreme Court decision in the case of Gidly vs. W.R. Grace and Company. In that case, the Montana Supreme Court is offering the then-existing occupational disease statutes to allow a worker or his or her beneficiary whose occupational disease is time barred to pursue a civil action against his or her employer.

The worker is then faced with the uncertainty of the significant expense and prolonged time requirements which is necessary as part of the civil litigation process. Workers then become highly dependent upon attorneys and the court system in their efforts to obtain some compensation for occupational related diseases. At that time, employers are deprived of their right to be free from civil actions by workers in exchange for them to participate in the no-fault Workers' Compensation and Occupational Disease Act. The Supreme Court ruling is inconsistent with the public policy facing Montana's underlying Occupational Disease Act. This legislation is intended to benefit both workers and employers by bringing both back under the coverage of occupational disease.

The proposed amendment to this bill addresses the procedural and administrative aspects of handling of claims brought by this particular group of workers or their beneficiaries rather than attempt to deal with procedures which were established 20 to 40 years ago. We want them eliminated and current administrative practices to be used in handling claims for such claimants at this time.

This deals with people who were employed up through July 1 of 1979, which was 20 years ago this past July. In addition, this does not apply to people who have filed litigation or who have litigation pending now.

Proponents' Testimony:

Brendon Rohan, Montana Liability Coalition, explained he is an attorney from Butte who represents clients who could potentially be impacted by SB 432. This bill applies to a certain limited potential class of claimants, those people who are last employed in the State of Montana prior to July 1, 1979.

This legislation intends to close a gap in Montana's occupational disease system. The gap was created by the law itself by the Montana Supreme Court decision and by medical science. A worker who was last employed in the State of Montana prior to July 1, 1979 had a maximum of three years within which to bring a claim for occupational disease benefits. {Tape : 2; Side : A; Approx. Time Counter :86 - 116}

A worker who had exposure to potentially hazardous or toxic substances in his work environment prior to terminating his employment on July 1, 1979 goes on for a period of time, perhaps 15 to 20 years and there is no symptoms and no way to diagnose his condition related to his employment before 1979. This legislation intends to provide for a worker who has suffered hazardous exposures during his employment to be treated in the same manner as workers applying for occupational disease benefits today are treated.

The secondary intent of this bill is to restore the status quo between the employer and employee which was lost through the Montana Supreme Court decision in Gidly. Essentially the Court determined is that if an occupational disease claim is time barred because of statutes in effect at the time the case was brought, the claimant is entitled to pursue a civil action against his employer. This bill should return the worker to the no-fault system of occupational disease and at the same time provide the employer with protection from civil claims. This bill provides the worker the opportunity to obtain benefits through the system that the legislature has always intended a worker who is injured or diseased in the course and scope of his employment can pursue his remedy against his employer, rather than pursuing a civil remedy in district court.

The proposed amendment to the bill simply makes clear the procedural aspects of handling these claims will be governed by the law in affect today.

He believes this bill satisfies both the employee and the employer and urged the Committee to pass SB 432.

Chris Gallus, Montana Chamber of Commerce, supports this bill. This bill eliminates the distinction between pre-July 1, 1979 employees and post-July 1, 1979 employees for the purposes of determining when an employee needs to file a claim for occupational disease benefits. The employees now have one year from when they discover they have an occupation related disease to bring the claim. The State has the discretion to allow two more years due to reasonable cause and ability. In a basic sense they have three years to file that claim. That rule does not apply to employees before July 1, 1979.

This bill extends occupational disease benefits to that particular group of employees, to give employers the protection of exclusive remedy. It avoids uncertain expensive and time-consuming and often protracted litigation, and provides immediate compensation for occupational related diseases. It also substitutes stable, no-fault insurance based system for the unstable system of litigation.

Senate Bill 432 does not affect cases currently before a court. It does not affect cases filed by people other than employees. It does not affect employees who worked in Montana after July 1, 1979. We are all better off in instances when we avoid protracted litigation. This bill will have little impact on the system, but provide immediate benefits for effective employees and will provide a stable environment for Montana employers to operate their businesses. It will help employees and employers avoid the consequences of litigation.

Matthew Quinn, Jr., Asarco, Attorney, said he had some clients who were potentially affected by SB 432. It provides two things, consistency and certainty for both the employers involved and for the employees. It puts the parties on the playing field so they know the rules and the outcome.

Eddye McClure informed the Committee on page 3, line 10 the department asked she add a new rule to subsection 5 which

basically says, "provisions of this chapter on the effective day of this act will govern the presentment administration of all claims filed under subsections 3 and 4.

Opponents' Testimony:

Roger Sullivan, Attorney, Representing Mine Workers and Families, informed the Committee he was in opposition to this bill. This bill appears to give relief to the worker injured by a disease, specifically asbestosis. The truth is this bill is really a W.R. Grace relief bill which would:

- 1) Deny the injured worker their present rights,
- 2) Put the worker in a position where we would have to apply for bureaucratic relief which can take years to obtain,
- 3) Substantially reduce the grievously injured worker's benefits.

More importantly, from a public policy standpoint it would:

- 1) Allow W.R. Grace from being held accountable for its acts,
- 2) It would transfer the obligation for these injuries to occupational disease insurers, both in this particular instance specifically and more generally.

He submitted EXHIBIT(5).

Don Judge, Montana State AFL-CIO, remarked many signed this legislation thinking it was a good bill. Further review discovered this legislation is intended to benefit, not just one corporation, but any large corporation whose employees terminated their employment prior to 1979 who had not been covered under the Occupational Disease Act as related to asbestosis in repetitive injuries and other types of injuries. The workers from W.R. Grace in Libby are members of the AFL-CIO. They belong to the Operating Engineers, which is one of the oldest local unions in the State of Montana. They fought for many years with W.R. Grace. They knew they were being exposed to something and they brought concerns to the AFL-CIO that they were taking these things home to their children. In a mine where there is dust, you don't blow that dust off, you carry it home with you. This

was going on in the 1960s and up to as late as that plant was operating.

There are more than just the workers of W.R. Grace in Libby. There are a lot of workers who worked with the former Anaconda Corporation who let their employment prior to 1979 and who may be impacted by this legislation. Occupational disease coverage in Montana is a joke. It is one of the worse laws in the country. It doesn't provide even the same level of benefits that you get if you are covered under a regular Workers' Compensation injury. Those workers at least have an opportunity through the court system to take on those employers who knew they were subjecting them to injuries, dust, and other chemicals. He urged the Committee to defeat this legislation.

Gene Fenderson, Montana Joint Heavy & Highway Committee, stated there was a series of articles in the USA Today Magazine last week. The articles tell about asbestos and what those companies did to people. One article is titled Miners, Factory Workers Bring Death Home on Toes, another is titled South African Blacks Never Knew That Asbestos Was Killing Them. Also, Public Awareness Has Never Caught Up With The Science was printed last week. This is not a question of allowing no fault insurance with reasonable employers. Employers have to be protected from the problems on the job just as a worker has to be protected. This is a totally different type of case and he asked that this bill not be passed.

Alice Priest, Libby, Montana, explained she has asbestosis/fibrosis of the lungs. Her husband, Virgil Priest worked at the W.R. Grace Company from October 1961 to October 1978. In 1982 he was diagnosed with cancer from asbestos and passed away three months later. Mrs. Priest was 54 years old at the time. She didn't receive Workers' Compensation. Her oxygen machine is her constant companion 24 hours per day. She eats, sleeps, bathes and uses the restroom with it. She explained all this was caused because the W.R. Grace Company did not keep this hazardous material from the workers and their families. She asked the Committee not to pass this bill.

Gayla Benefield, Libby, Montana, claimed she did some research on the W.R. Grace Mine. In 1922 that mine was an asbestos mine and vermiculite was a bi-product. They found a market for it by expanding it and eventually it became the asbestos and

vermiculite mine and then just to vermiculite. She said her father went to work there in 1954 and worked there for 19 years. In 1973 he was 61 years old and couldn't even walk across the room. He thought he had heart problems but got outside of Libby and found out he had no lungs. He died in 1974 at age 62. They almost precluded the high cost of disability by 18 months. Her mother was 54 at the time and by 1980 her mother began having pneumonia every year. Finally, in 1986 she was diagnosed with asbestosis. In their family, Ms. Benefield said no one knew it was asbestos which caused all this because no one talked about it. They never heard the word asbestos and her father never mentioned it. Her mother died in 1986 and was bedridden for the last 17 months of her life. She was on oxygen for ten years and financially this took everything she had. Ms. Benefield alleged she lived with the remnants of this company for 25 years and has done nothing but pick up the pieces. Her brother in-law died in 1992 from lung cancer and he worked there. She named several families in Libby whose relatives have died from asbestosis and whose children have been affected by it. She said this company knew and chose to turn their back on it because of greed. If this bill passes, it will make it easier for a company which brought everything down on themselves. The town of Libby still continues to suffer because of W.R. Grace. There is over 200 cases of diagnosed asbestosis in a town of 2800 people and there is no 'red flag' raised. Most people are too sick to talk about it. This bill cannot pass.

Dennis Day, Representing Self, Libby, stated his father died in 1978 at the age of 62. Mr. Day worked at the mine for 20 years in all types of dust. It was very unpleasant trying to work with the Workers' Compensation people in Missoula and he asked for a "do not pass" on this bill.

Les Skramstad, Representing Self, Libby, said he worked in the mine for 45 years and worked in incredible dust for \$2.35 per hour. After 30 years he looked around and all his friends were dead. He went to Dr. Whitehouse in Spokane who diagnosed him with asbestosis and told him that he had five to ten years to live. That was three years ago. People are being exposed to this stuff in Libby right now, his is not an isolated case. Everybody he knew is gone and the town is still full of this stuff. He begged the Committee not to pass this bill.

LeRoy Thom, Representing Self, Libby, commented he also worked for W.R. Grace from 1974 until they shut it down in 1990. He also worked on the tear-down of the plant. It appears to him this bill is specifically protecting W.R. Grace and he doesn't know why the Committee would even consider protecting a company that doesn't even reside in the state and has caused so many problems. {Tape : 2; Side : B; Approx. Time Counter : 116 - 175} They have caused expenses which the State of Montana has had to pay, expenses which W.R. Grace should incur. He doesn't know why this company hasn't been held responsible when they have intentionally and willfully subject employees to an unsafe workplace, whether it is 1979 or 1999. He strongly urged the Committee to 'kill' this bill.

Al Smith, Montana Trial Lawyers Association, stated they are very much opposed to this bill. When he saw the bill title, at first he thought it was great to take care of these workers, but then realized it was a bad bill. The Gidly decision was made in 1986 so where was this legislation in 1987, 1989, etc? Six legislative sessions have passed since and suddenly we want to help these workers. He said it doesn't work that way. He doesn't know who the members of the Montana Liability Coalition are, but he guarantees they are not workers. This bill protects corporate dollars, pure and simple, primarily W.R. Grace. There are comments made this bill does not affect claims which are currently filed. This tries to make a retroactive application of the Occupational Disease Act and he believes it is true those claims have already been filed and you cannot prevent those. But if you look at the law, it does say that anybody who within three years of the effective date should have known about the disease are now under the Workers' Compensation Act which is their exclusive remedy. People up to the present date no longer have the option to file a claim. Those people who knew of it three years ago would be prevented by this because of the Workers' Compensation exclusivity law. Workers who have been exposed to toxic substances over the years in the workplace. As a public policy matter we should help those folks out and identify those who need our help. Let's draft a bill to help those people and doesn't help out just the employers.

Nancy Butler, State Fund, remarked their concerns are directed at the principles of insurance. This bill retroactively imposes liability 20 or more years later. This type of exposure is not

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contemplated with premiums which are assessed before 1979. The overall impact of legislation leaves a gap between the impact and effective date. It minimizes the predictability and stability of the Workers' Compensation System in Montana. The impact for the State Fund would be on the Old Fund, not the current State Fund. The bill, as it reads states it is for persons who are last employed prior to July 1, 1979. The Gidly decision interpreted the Occupational Disease Act as declaring the last day of work the date of the occupational disease. That sets the benefits paid so the wage loss benefits at the compensation rate would be the benefits in affect for those years prior to 1979. Medical benefits would be as of the date of service, they operate a little differently. If the process changes, it is applied to all claims, not just claims from that date forward.

Norita Skramstad, Representing Self, Libby, said her husband is diagnosed with asbestosis. Most people have husbands, wives, kids and grandkids. What if they were all diagnosed with asbestosis. Even the kids who played in ballfields in Libby were exposed. She has kids and grandkids who have played in these fields for years. A lot of houses in Libby are still insulated with asbestos. W.R. Grace hasn't helped anybody clean up any of the problems. They are ignoring it and trying to sweep everything under the rug. She doesn't believe this bill should pass.

REP. SCOTT ORR, HD 82, Libby, stated he doesn't believe neither the sponsors of the bill nor the co-sponsors really understood the ramifications of the bill. It was probably presented with one side. This is a W.R. Grace bill and W.R. Grace is not appearing to present their side of the story, they do that in court. Like most corporations, they are a good neighbor and have done a lot of good things for Libby. They have built ballfields.

REP. ORR explained that when he was in High School, he took vermiculite, expanded it with a bunson burner, ground it into flour, made cookies and ate it to show vermiculite is good stuff. He doesn't thinks eating it is harmful, but breathing it is. The fact is he played little league baseball on vermiculite fields and may also be affected. In his opening, SEN. THOMAS said this is for workers whose claims are time barred and those workers are not present. Those workers who are present aren't those workers. This bill doesn't benefit the workers and the company. It does not bar folks who have filed litigation at this time, but it will bar those who have not filed. These cases are surfacing. He

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presented a letter written to House Speaker John Mercer which was dated January 12 and is from the 19th Judicial District Court in Libby. It regarded a proposal to do away with the 20th Judicial District which is Sanders County and combined it with Lincoln County. When Speaker Mercer talked with the judge about this, the judge stated he did not believe it would work. This letter follows up that if Sanders County were separated from Wright County and combined with Lincoln County, that Lincoln County would move up to the highest case load of 1168 filings. Lincoln County's case load includes several scores of asbestos cases, 80 at last count, with more being filed weekly. These cases are complex and each case requires two weeks of trial time. Most of the plaintiffs are elderly and many are very ill. These cases require as many trial settings as they can manage and they have set up four special file terms throughout each year to handle this asbestos litigation. Even at that, plaintiffs are dying before their cases can be heard. It would be virtually impossible to manage these cases by adding 350 cases each year to the existing case load. REP. ORR believes W.R. Grace knows they are losing these cases in court and they want to get away from that. He believes these workers need to continue to be able to go to court to get what is due them. Big corporations do not have a heart and soul, they don't live and breathe and they are doing what is best for the stockholders, not for the people who have hearts and souls and live and breathe. He asked the Committee not to fix this bill, but kill it.

Informational Testimony:

Jacqueline Lenmark, American Insurance Association, expressed she would like to present some observations about the bill and the testimony from the perspective of her association. First of all, although W.R. Grace is mentioned in the title of one of the cases in the 'whereas' clauses, it is her belief this bill is not directed at one corporation. This bill's impact probably will have less impact on the employers than on insurers. It is her belief that most of these claims are insured and, if the bill passes, they will be insured either under the Occupational Disease Act or if not, under some other commercial liability policy. Very likely, they will be insured by the companies Ms. Lenmark represents. She is a member of the Montana Liability Coalition. She did not attend the meeting at which this particular piece of litigation was discussed, so she did not have

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the benefit of the coalition's decision to bring this legislation forward. She thinks SEN. THOMAS' introductory remarks were absolutely accurate and so were Mr. Rohan's remarks and arguments. This bill, if passed, will have an impact on a very small population of claims. Her concern with this bill is a precedent that it might set for insurance schemes. That is what she sees is a retroactive amendment of a benefit scheme. Insurance companies make their best guess, develop their rates, charge their premiums based on predictable information. When the premiums were collected for the claims that this legislation would cover, this benefit was not contemplated. She suspects her companies would probably incur dollars, but with these kinds of claims benefit if this legislation passes. But she also does not believe it is good public policy to retroactively adjust benefits when the premiums have already been collected. She seriously doubts that the employers heard about will have a dramatic economical affect one way or the other.

Questions From The Committee:

SEN. WILSON asked Chris Gallus who the Montana Liability Coalition consisted of.

Mr. Gallus responded they are an election of businesses and he is the chairman of the coalition and has been since he began with the Montana Chamber of Commerce. They generally send out solicitations to businesses and tell them about different things the coalition is involved in and they also generally seek contributions from that. Various members and associations meet on occasion to discuss legislation. They began with the Wrongful Discharge Employment Act in 1987 or 1989. They have done things since including the Joint Civil Liability bills last session.

SEN. WILSON asked when this bill was drafted, if W.R. Grace is mentioned in the language.

Mr. Gallus answered W.R. Grace is mentioned in the legislation because the Gidly decision pertains to them. This was never an attempt to place before this Committee or legislature the 'W.R. Grace Relief Bill'. They felt as a result of the Gidly case, they could provide benefits for a certain class of employees and employers could have exclusive remedy for. This speaks to the employee-employer relationship and not exposure by W.R. Grace

which might occur to families, residual exposures, or exposures on ballfields. W.R. Grace is still liable.

SEN. WILSON alleged everybody who testified has mentioned W.R. Grace, with the exception of Jacqueline Lenmark. He asked Brendon Rohan if he were involved with W.R. Grace in any form.

Mr. Rohan responded he does not represent W.R. Grace and has never represented W.R. Grace. His involvement in working with this bill did not include W.R. Grace. He was somewhat surprised by all the focus on W.R. Grace. The first time he heard the term 'W.R. Grace Relief Bill' was today. There may be many employers who have some benefit from this bill, but it is certainly not directed at W.R. Grace and never has been. From the testimony incurred, there are some problems with W.R. Grace. As Mr. Sullivan has acknowledged, once they bring people inside the Occupational Disease System, if you have an employer such as W.R. Grace who has engaged in types of conduct which have been alleged, there are, in fact remedies outside the Occupational Disease System which allows an employee who has been injured by the willful and intentional conduct by an employer to bring a civil claim. This bill certainly has a much more broad base than W.R. Grace and it goes down to any employer who had an employee who worked and terminated his employment as of July 1, 1979. From his perspective, this is not a W.R. Grace bill.

SEN. WILSON asked Roger Sullivan the same question. Did W.R. Grace bring forth this bill?

Mr. Sullivan responded 'yes', because it is the Gidly vs. W.R. Grace & Company decision which is recited in the preamble to be amended. It is the facts and the law that was handed down in that decision that this bill is intended to remediate at the expense of Montana workers and the expense of Montana's employers. As Ms. Butler and Ms. Lenmark pointed out, also at the expense of Montana's insurers. It doesn't make sense on a broad basis, but it explicitly derives from certain work-related disease process caused by toxic exposures in the workplace such as asbestosis.

SEN. WILSON inquired why there were three different diseases mentioned.

Mr. Sullivan conveyed the diseases which are caused by asbestos exposure at W.R. Grace's facility are mesothelioma which is a cancer of the lining of the lungs which often times affects the heart and is an extremely painful death process. There are many people in Libby who have died from mesothelioma. The second is lung cancer, which is one most of us are familiar with, and the third is asbestosis which is a fibrosis which results in suffocation because it turns the pliant lung into leather, so the victim cannot breathe, and ultimately they die a strangulated death.

SEN. WILSON asked if this is the plant close to the railroad tracks by Libby.

Mr. Sullivan answered that was the loading facility along the Kootenai River along the railroad tracks and this material was loaded into the railroad cars for transport all over the country into expanding plants. That ultimately was made into products including the Monoco Products and there have been extensive injuries which have occurred throughout the United States as a result of the application of asbestos product.

SEN. WILSON asked how many pending civil cases there are now.

Mr. Sullivan responded presently pending in the courts of Montana are over 100 cases against W.R. Grace. It is also important to keep in mind the expeditious resolution of these cases. The court involved as been uniquely capable of resolving these cases through an extraordinarily expeditious manner, unlike the Occupational Disease claims which take years to resolve. Those cases are excellently and efficiently managed and quickly resolved. Procedurally, the merits for resolving them in that manner are also far in favor of resolving them through civil action rather than the time-consuming and bureaucratic system of Occupational Disease administration in Montana. He said he just celebrated the dispensing of the Old Fund Liability. Why invite having to refinance that Old Fund.

SEN. MCNUTT asked Mr. Sullivan regarding the 100 cases filed against W.R. Grace, are they all employment related?

Mr. Sullivan answered a substantial portion are. The tragic truth is a small percentage of those involve the wives and a smaller percentage involves the children. Most involve the workers.

SEN. MCNUTT inquired of those which don't involve the workers, certainly they wouldn't be precluded from filing a case. The children and wives would not have been covered under Workers' Compensation, because they weren't working. If you have a grievous act, this bill will not preclude these good folks from having their civil action against W.R. Grace.

Mr. Sullivan responded first of all, if the only injury sustained by an individual in Libby is a non-work related asbestos injury, they have a civil action. Many of the wrongful death claims that are presently pending in Libby, Montana are what are known as derivative actions. There was a wrongful death case which was tried a couple weeks ago. That case involved claims of the children based on the wrongful death of their father. It depends upon the nature of the claim which has been asserted by the family members.

SEN. COCCHIARELLA asked if there is someone who worked before July 1, 1979 who now knows or develops asbestosis, doesn't have another remedy if this bill is passed. The only remedy they have is to file an Occupational Disease claim. Is that the purpose of this bill?

Mr. Sullivan responded that is correct.

SEN. COCCHIARELLA asked SEN. THOMAS regarding how this bill does not affect many people and won't go too far, also, that we've worked together on these issues for a long time now, Jane worked at the ABC store for two years, sometime before she quit her job July 1, 1979. At that time, she had no symptoms of carpal tunnel. She quit that job and went home to babysit for 20 years. Then she went to the doctor who diagnoses the numbness in her hands is related to the work which she must have done. Would she fit under this bill and able to file a claim?

SEN. THOMAS responded he was not sure.

George Wood, Executive Secretary, Montana Self-Insurer's Association, stated under this bill, she could file.

SEN. COCCHIARELLA asked if Jane worked at the ABC store for sometime, quit before July 1, moved to Arizona and golfs for 20 years, could she file a claim under this bill?

Mr. Wood answered if she hasn't worked in Montana since July 1, 1979, yes.

SEN. COCCHIARELLA asked what if the ABC store no longer is in operation in Montana, quit business, went away, who would end up paying for that occupational disease?

Mr. Wood responded if the ABC store is out of business and it was self-insured, the self-insured employer would be liable.

SEN. COCCHIARELLA explained she is embarrassed and ashamed to have her name on this bill. In the 12 years she has been a legislator she has never felt so duped into signing a piece of legislation. She asked SEN. THOMAS if he knew this reaction would come as a result of his legislation.

SEN. THOMAS answered there was some inclination of this today, but not prior to today.

SEN. BARTLETT asked Nancy Butler since she mentioned that if this bill passed and someone were covered under the Occupational Disease Act for a pre-1979 claim if she would explain what the dollar amount of wages would be or what the settlement would be.

Ms. Butler explained for fiscal year 1978, which would have began July 1, 1977 the maximum wage loss benefit would have been \$174 per week. It might be less for prior years and more for later years. The medical benefits would begin the date of service. As long as a person is totally disabled, either temporarily or permanently, they would receive the bi-weekly benefits. There are no partial benefits available under the Occupational Disease Act. There is currently a benefit that if you have a wage loss, you can receive a payment up to \$10,000.

SEN. COCCHIARELLA asked regarding the amendment discussed at the beginning of the hearing (yet to be drafted), how does buying

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current administrative procedures work with current processes or procedures, using benefits from 1979?

Ms. Butler answered you would look at the definition of 'proximate cause' regarding how you would handle disputes.

SEN. COCCHIARELLA then asked her if she thought it would work.

Ms. Butler answered yes, without looking at it though, she thought it would work.

SEN. COCCHIARELLA asked what the maximum benefit under the Occupation Disease Act is now.

Ms. Butler conveyed it is \$411 per week is the maximum up to \$10,000 if the person is losing wages.

SEN. BERRY inquired of Roger Sullivan if he had any idea of the numbers of people filing claims using the pre-1979 law.

Mr. Sullivan said W.R. Grace would probably have a better count since they have extensive data on the number of employees who have worked and when they worked. He referred the questions to LeRoy Thom.

Mr. Thom replied at the closure there were over 100 people and in the 1970s there were 400 people.

SEN. BERRY asked if the mine closed in 1990.

Mr. Sullivan responded it closed in 1990 and reclamation occurred and continued to ship out product between 1990 and 1993.

Closing by Sponsor:

SEN. THOMAS closed by apologizing to the people of Libby and said he appreciated all their testimony. He said it is good to know what has happened in Libby with W.R. Grace. It is still a question of public policy that occupational disease vs. litigation. That is a good and fair question. The circumstances which are now obvious doesn't make this a good time to examine that issue, but it still an issue which should be looked at in

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some point in time. We cannot amend W.R. Grace out with this legislation, but beyond the circumstances with family there are other employees outside that spectrum who don't fit in this same situation. They may have lighter cases which are true occupational disease cases and this legislation would help them. This legislation was brought to the Committee with those people in mind and not this situation with W.R. Grace. Even though W.R. Grace is mentioned in the legislation, they did not intend for it to be a W.R. Grace provision, it was a Supreme Court decision of litigation. This bill does have value in who it could help, but it has a lesser value of what has been presented by the people of Libby.

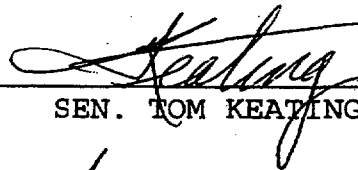
SENATE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

February 16, 1999

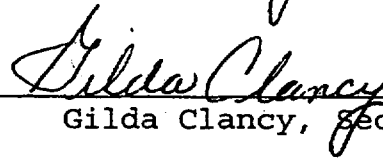
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ADJOURNMENT

Adjournment: 5:59 P.M.



SEN. TOM KEATING, Chairman



Gilda Clancy, Secretary

TK/GC

COMMENTS IN OPPOSITION TO SB 432

By Roger M. Sullivan
February 16, 1999

1. **Introduction.** Good afternoon. My name is Roger Sullivan. I am a lawyer with the Kalispell firm of McGarvey, Heberling, Sullivan & McGarvey. I appear in opposition to Senate Bill 432. On its face, the bill appears to give relief to the worker injured by a latent disease such as asbestosis. The truth is that this bill is really a W.R. Grace relief bill which would in fact deny the latently injured worker their present rights; put the worker in a position where he would have to apply for bureaucratic relief that can take years to obtain; and substantially reduce the grievously injured worker's benefits. More importantly, from a public policy standpoint, it would allow W.R. Grace to avoid being held accountable for its acts; it would transfer the obligation for these injuries to occupational disease insurers, both in this particular instance, as well as insurers for other employers whose employees have been exposed to toxic chemicals. In order to meet this obligation retroactively imposed on insurers, Montana's employers would once again face the prospect of rate increases on their premiums.

We represent W.R. Grace mine workers and their family members who have been injured and killed by exposure to asbestos in the vermiculite ore, both at work and brought home on the clothes of the mine workers. The extent of this disaster is unprecedented both in terms of the human misery caused by W.R. Grace and by the deception carried out by Grace. Although Grace abandoned the Libby community in 1993, it has apparently returned to seek relief from the Montana legislature through SB 432. I have two objectives here this afternoon. First, I want to briefly describe to you the nature and extent of the wrongdoing done by W.R. Grace, the consequences of which this company seeks to avoid responsibility for through this legislation. Second, I want to emphasize to you the far-reaching implications of this proposed legislation and why it makes for bad public policy.

2. **History of asbestos knowledge.** Medical literature documenting asbestosis and other lung diseases resulting from exposure to work related exposure to asbestos has been reported in the professional medical literature in America since the turn of this century. A number of articles appeared in such periodicals as the Journal of the American Medical Association as well as industrial hygiene publications prior to 1950.

3. **Confidential state reports.** The vermiculite mine and mill in Libby had been in operation since at least the 1930s. The mining and milling process produced a

considerable amount of dust. In 1956 the Montana Board of Health issued a report based on its industrial hygiene study of the Libby facility. (See Tab 1.) That report informed the company of numerous air quality violations, numerous violations of standard industrial hygiene practices, and informed the company in unequivocal terms that: "The asbestos dust in the air is of considerable toxicity, and is a factor in the consideration of reducing dustiness in this plant." The report cited to the extant industrial hygiene literature and described the disease process set in motion by asbestos exposure.

For decades after the issuance of this report, the Zonolite Company and W.R. Grace withheld this critically important information from its workers, their families, and indeed the community of Libby. In fact, a number of similar reports from the Montana Department of Health followed, which reports were also explicit in their warnings regarding the toxicity of the asbestos in the dust and these reports were also withheld from the workers and their families. In fact, this sorry legacy was described by W.R. Grace's attorney, S.Y. Larrick, in a letter of November 25, 1967 (see Tab 2.) As conceded by Grace's attorney, the Montana Department of Health inspections from 1956 forward revealed that the asbestos content in the dust far exceeded allowable concentrations, and in fact the deadly dust concentrations increased over time.

Most troubling, both in terms of the deaths and human misery caused as well as relevant to this bill is W.R. Grace's response to its knowledge of the enormous health hazard posed by the asbestos in its vermiculite. In 1959, Dale McGarvey of my firm was chairman of the House Committee on Workman's Compensation. That legislative session succeeded in passing Montana's first Occupational Disease Act. In 1965, asbestosis was added as a compensable occupational disease. However, when the first employee from W.R. Grace filed for occupational disease benefits, W.R. Grace fought the claim tooth and nail. When the claimant, Lilas Welch, was finally able to get the matter to a public hearing in Kalispell in 1967 before Montana's Industrial Accident Board, W.R. Grace decided that it had best settle the claim. The company's rationale is revealing (see Tab 2, p. 2):

You might wish to seriously consider a compromise settlement in hopes of in this manner **avoiding the necessity of exposure** of all the more damaging aspects of our own situation in the hearings rooms . . .

...keep them out of the hands of the Industrial Accident Board and the general public . . .

...avoid having evidence presented which would reveal the extent and severity of the problem . . .

4. **Grace ignored the advice of its insurer.** Especially repugnant in the context of this proposed legislation is W.R. Grace's repeated decisions to ignore the advice of its insurer, typified by Maryland Casualty's letter to W.R. Grace dated December 16, 1969, which provides in relevant part as follows (*see* Tab3):

Certainly when an x-ray picture shows a change for the worse, that person must be told and that person must be gotten out of the environment which is aggravating his condition. Failure to do so is not humane and is in direct violation of federal law.

Notwithstanding the insurer's explicit advice to Grace, Grace chose to continue to put its already diseased workers into dusty conditions, as was recently proven during the November trial in which a Libby jury found that W.R. Grace wrongfully killed Margaret Vatland by allowing asbestos dust to go home on the clothes of her husband. (*See, Benefield v. W.R. Grace*, decided November 13, 1998.) Unfortunately, what W.R. Grace knew about the toxicity of its asbestos, and what Grace knew about the rampant extent of lung disease among its workers was kept secret from the workers, the workers' families and the community of Libby.

Ironically, now Grace asks you to shift the liability back to the workers' compensation insurer - - who was pleading to get the workers out of the dangerous dust.

5. **Percent of workers with disease.** Tab 4, entitled "Workers with Disease" sets forth W.R. Grace's own confidential compilation of the percentages of its workers who suffered from lung disease. According, to a confidential 1969 study by Grace, 17% of its workers with 1 to 5 years of service had lung disease, 45% of its workers with 10 or more years had lung disease, and 92% of its work force with 21 to 25 years of service suffered from lung disease.

6. **Grace's response to known health hazards.** Over the years Grace continued to violate applicable air quality standards for asbestos at its Libby facility. In fact, until closure in the 1990s it continued to ship its vermiculite products out of Libby with asbestos still in it. As indicated on Tab 5, Grace was aware that "any exposure to asbestos dust is hazardous", let alone the enormous amounts of asbestos that it was exposing its workers to. However, W.R. Grace did develop a truly outrageous strategy:

If we minimize [Libby employees'] exposure to a dust level not exceeding 5 mppcf chances are we may be able to keep them on the job until they retire, thus precluding the high cost of disability.

So although Grace hid the health hazards of asbestos exposure from its workers, and failed to comply with applicable air quality standards, it did develop a strategy that would at least keep its workers on the job until they retired, only to spend their last years gasping for air, but at least W.R. Grace could thereby avoid "the high cost of disability".

7. **Asbestos death - Libby workers.** And die they have - - by the score. Set forth at Tab 6 is a list of Libby workers whom we know have died from asbestos-related diseases. There are undoubtedly more. Unfortunately, there are also numerous family and community members who have suffered from asbestos disease and some that have died from asbestos exposure who are not included on this list of workers.

8. **Grace's response to OD claims.** One of the more cruel ironies of Senate Bill 432 is that it purports to be in furtherance of this state's policy of, "providing occupational disease benefits to workers through a no-fault system in a timely manner with minimal reliance on attorneys in the court system." And yet, quite the contrary has been the case with W.R. Grace. Illustrative of Grace's approach to the adjustment of occupational disease claims submitted by its employees is the case of Don Riley (*see* Tab 7.) Don Riley filed his OD claim in 1981. Grace denied liability, and the matter finally came to hearing in 1990. In 1991 a decision was finally reached determining that Don was entitled to benefits and medical expenses, ten years after the claim was filed.

9. **Public policy implications.** Although in many ways SB 432 appears as a private relief act for a single corporation, it also has much broader public policy implications. In fact, SB 432 is one large out-of-state corporation's Trojan horse which is being unwittingly wheeled into Montana by well intending legislators. On its face, it appears to benevolently extend the time period within which occupational disease claims must be presented for latent diseases, such as asbestosis. However, I have already attempted to show you the bowels of corporate corruption which reside in this hollow horse and the death and human misery that have resulted for the good people of Libby. But the dark specter of this bill doesn't end there.

Insurable risks are well understood by insurance companies and employers. The proposed amendments to Section 403 of the Occupational Disease Act open a Pandora's box of new risks, neither anticipated nor bargained for by Montana's insurers and employers. Montana's insurers, employers, and employees have all understood for years that their relative rights and liabilities are defined by the Occupational Disease laws in effect on the employee's last day of employment. (*See, e.g., Buckman v. State Fund*, 224 Mont. 318, 730 P.2d 380 (1986); and *Gidley v. W.R. Grace*, 221 Mont. 36, 717 P.2d 21 (1986)). Attempting to go back and retroactively amend the parties' contractual rights and remedies may well

benefit a single out-of-state corporation, but it will come a high cost in terms of the risks born by every business in the state of Montana, both large and small. The family ranch (and its insurer) in eastern Montana whose ranch hand applied herbicide in the 1970s and now suffers from some neurogenic disorder attributable to a toxic chemical in the herbicide will now face the prospect of claims long thought dead. And what about the logging companies in western Montana, who have been so vigilant in managing their insurable risks? The industrial diseases such as white finger and carpal tunnel syndrome, with their genesis from work years before, now once again spring into existence as viable occupational disease claims against Montana's logging companies. And even if my small business or your small business never face the prospect of claims for latent injuries in our work places, we know that we all face the prospect of increased workers' compensation and occupational disease costs when claims are submitted for whom the employer can no longer be found. The liability of Montana's uninsured employers' fund is significant. The prospect of launching off into the uncharted waters of the unlimited time provisions for filing claims contained in SB 432 is indeed daunting and ill-advised.

10. **Conclusion.** I earnestly believe that none of you would take issue with the proposition that our laws are intended to do justice for our people, the citizens of the great State of Montana. I have attempted to demonstrate that this law is not just. Even if passed, in my opinion it suffers from grave constitutional infirmities, including violation of our constitution's contract clause, the prohibition on the enactment of *ex post facto* laws, Article 2 Section 16's guaranties of access to the courts and remedies of injured workers, as well as due process and equal protection. Above all, SB 432 is bad public policy. Neither the people of Montana, nor small businesses, nor large law abiding businesses deserve the wrath caused in the wake of one irresponsible corporation, whose actions have resulted in the death and injury of so many good people in Libby and left the community to fend for itself as best it can, including through the courts -- where these people have obtained some measure of justice. Please don't take this from them. Thank you.

For your convenient reference I have attached at Tab 8 a summary of events relative to W.R. Grace's legacy in Libby. For further information please don't hesitate to contact me:

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Helena, Montana

DIVISION OF DISEASE CONTROL

A

REPORT ON AN INDUSTRIAL HYGIENE STUDY

OF THE

ZONOLITE COMPANY

OF

LIBBY, MONTANA

August 8-9, 1956

Conducted by:

Benjamin P. Wake
Industrial Hygiene Engineer
Division of Disease Control

Distribution:

This report is confidential
and is not for distribution
except to the management of
the Zonolite Company.

This is a true and correct copy of a document on file in my office.

Andrea Victory
Andrea Victory, Mont. Dept. of Environmental Quality

CONFIDENTIAL

KNOWN ASBESTOS HEALTH HAZARDS

W.R. Grace/Zonolite: Report on an Industrial Hygiene Study of the Zonolite Company, Libby, Montana by the Montana State Board of Health
1956

[T]he asbestos dust in the dust in the air is of considerable toxicity, and is a factor in the consideration of reducing dustiness in this plant. According to Drinker and Hatch, the pathologic changes produced by asbestos are not like those of silicosis. The asbestos fiber group about the neck of the small air sacs in the lungs, and stimulate the formation of a diffuse fibrosis. There is no definite migration or transportation of the dust particles to the lymph nodes and no formation of the fibrin nodules. As the fibrosis increases, the reduction in lung area causes a serious decrease in lung capacity, or difficulty in breathing.

KNOWN ASBESTOS HEALTH HAZARDS

W.R. Grace/Zonolite: Letter to John Hopkins from S.Y. Larrick re Lilas Welch claim, November 25, 1967.

. . . the original plant inspection conducted in 1956 revealed a dust problem in the dry mill.

. . . plant inspections did reveal asbestos content . . . did far exceed what were considered to be allowable concentrations.

In 1962, dust samples revealed a high asbestos content, and the board's conclusions at that time were that "no progress had been made in reducing dust concentrations in the dry mill to an acceptable level, and that indeed the dust concentrations had been increased substantially . . .

A study of the information furnished by the State Board would therefore make it appear that the asbestos problem has existed certainly since 1956, and generally with increasing severity.

Exhibit 92a (pp.1-2)

GRACE RESPONSE TO KNOWLEDGE

**W.R. Grace/Zonolite: Letter to John Hopkins from S.Y. Larrick re Lilas Welch claim
November 15, 1967**

"You might wish to seriously consider a compromise settlement in hopes of in this matter avoiding the necessity of exposure of all the more damaging aspects of our own situation in the hearings rooms"

"keep them out of the hands of the Industrial Accident Board and the general public"

"the only persons aware of the studies are Zonolite officials and Dr. Little"

"avoid having evidence presented which would reveal and the extent and severity of the problem."

Exhibit 92a

KNOWN ASBESTOS HEALTH HAZARDS

**W.R. Grace/Zonolite: Memo to Kostic, Lovick, et al. from
Loss Control Consultant at Maryland Casualty Co.
December 16, 1969**

Certainly when an x-ray picture shows a change for the worse, that person must be told and that person must be gotten out of the environment which is aggravating his condition. Failure to do so is not humane and is in direct violation of Federal law.

Exhibit 136

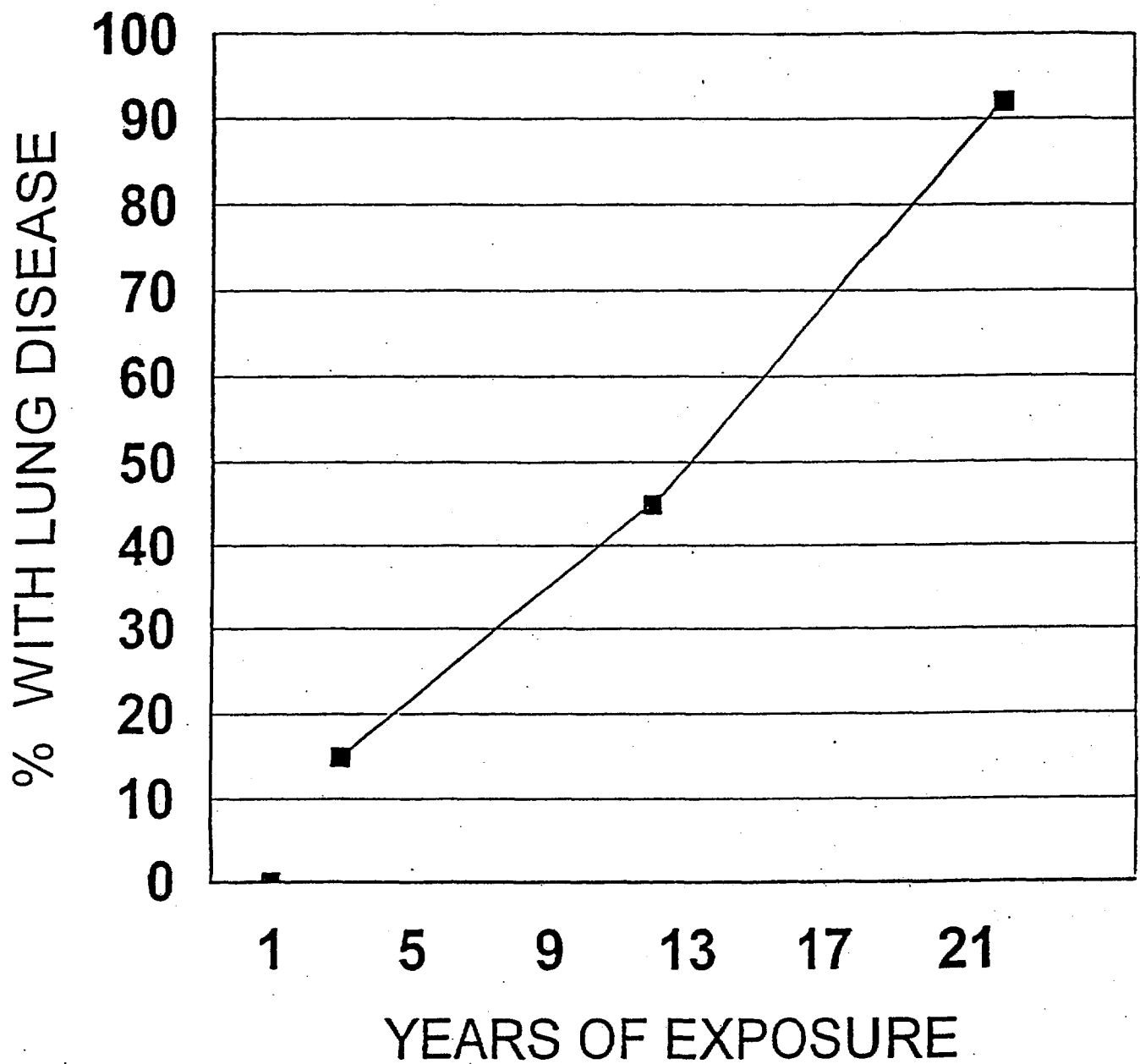
KNOWN ASBESTOS HEALTH HAZARDS

W.R. Grace/Zonolite: Confidential Study of
Zonolite/Libby Employees, Lovick et al.
(1969)

Although 17% of our 1 to 5 years service group have or are suspect of lung disease, there is a marked rise (45%) beginning with the 11th year of service, climbing to 92% in the 21 to 25 years service group. This suggests that chances of getting lung disease increase as years of exposure increase.

Exhibit 130.4

Workers with Disease



KNOWN ASBESTOS HEALTH HAZARDS

W.R. Grace/Zonolite: P. Kostic to R.W. Sterrett
January 5, 1968

Quote: "The Industrial Hygiene Foundation is currently circulating a communication which I have seen, proposing a 0.0 mppcf for asbestos dust. They apparently feel that any exposure to asbestos dust is hazardous. Many doctors are of the opinion that there is a definite relationship between asbestos dust and certain types of cancer."

(p.2)

* * *

If we minimize [Libby employees] exposure to a dust level not exceeding 5 mppcf chances are we may be able to keep them on the job until they retire, thus precluding the high cost of total disability.

(p.2)

Exhibit 99.3

ASBESTOS DEATHS - LIBB - WORKERS

Mesothelioma Deaths

Verle L. Olson	Ronald B. Johnson*	Clarence A. Peterson
Darrell Lockwood	Morland Baker	John B. Calkins
Michael S. McNair*	Edward Wittlake, Jr.	Hord M. Kimble, Jr.*
Robert L. Graham*		

Asbestosis Deaths

Glenn R. Taylor	Perley Vatland	Walter E. Baker
Charles M. Wagner	Lawrence A. Kins	Hord M. Kimble, Jr.*
Walter L. McQueen	Thomas B. Craver	Joseph K. Lyon
William E. Hedrick	Lloyd M. Miller*	Walter H. Dutton
William E. Smithers*	Orville G. Murray*	Lyle Warner
Orville D. Murray	Robert L. Weitzel	Robert W. Vinion*
Henry G. Hammer	Robert E. Dahms*	Ronald B. Johnson*
Lilas D. Welch	Michael S. McNair*	Raymond A. Belangie*
Jack W. Lewis, Sr.	Clyde C. Basham	Charles E. Carroll
Lyle E. Siefke	Lloyd P. Maynard	Morris H. Kair
Harvey R. Noble	Willis D. Fields*	Robert D. Thomson*
Billy J. Dorrington*	Raymond P. Carlson	George J. Oldham
Donald F. Peterson	Harold O. Shrewsbury	Rex E. Smith*
William E. Hostetler	Robert C. Stufflebeam	Donald A. Riley
Robert L. Graham*	Donald A. Johnson	

Lung Cancer Deaths

Rudolph C. Engle	Raymond C. Osborn	Otis L. Mast
John E. Ludwig	Raymond A. Bleich	William F. Shows
Jimmie A. Starr	William E. Smithers*	Lionel B. Van Horn
Edward D. Dinwiddie	Roy Dawson	Robert E. Cohenour
Harold D. Day	Ted R. Wright	Glenn W. Mitchell
Lloyd M. Miller*	Orville G. Murray*	Richard J. Rayome
John G. Parker	Robert E. Dahms*	James L. Gidley
Virgil P. Priest	Peter R. Powell	Kenneth L. Koehler
Herbert L. Waltman	Robert W. Vinion*	Calvin G. Henderson
Merle S. Everett	James D. Smith	John I. Kilpatrick
Raymond A. Belangie*	Clyde D. Snyder	Kenneth M. Fredericks
Ted M. Boyd	Willis D. Fields*	Robert D. Thomson*
Arnold L. Smith	Billy J. Dorrington*	Henry O. Schnetter
Gerald E. Nelson	Donald O. Howard	Rex E. Smith*
Robin V. Clark	Thomas O. Albert	Wesley Siefke

TOTAL DEATHS:

85

GRACE'S RESPONSE TO OD CLAIM

- **12/9/81. Don Riley filed OD claim.**
- **3/3/87. Don's last day of work. (At that time, Grace's insurer was Transportation Insurance Co.)**
- **3/24/87. Order of Determination issued by Workers' Comp. Div'n. that Don not disabled as a result of OD. Don appealed.**
- **4/10/90. Hearing held in Kalispell before Arlyn Plowman, hearings examiner. Both parties conceded that Don had asbestosis and was permanently disabled, but contend that Don had other conditions besides asbestosis which were non-compensable. Wanted the Div'n. to apportion causation and benefits.**
- **1/9/91. Findings of Fact/Conclusions of Law issued by Arlyn Plowman in Don's favor. 3/24/87 order reversed. Don totally disabled as a result of occupational exposure. Entitled to total permanent benefits and medical expenses, and costs and attorney fees.**

Date	THE UNFOLDING OF EVENTS	Dead	Over 10 yrs work % abn
1930	Asbestosis well known in med lit. Bob Graham is age 3.		
1946	ACGIH 5 standard for asbestos - invisible.		
1953	Asbestos lung cancer is well established in med lit.		
1956	State Report - confidential. p.3 asbestos - "considerable toxicity". asbestosis. p.2 asbestos violations. p.4 dust control poor. co: serious hazard from asbestos.		
1959	State Report - confidential. p. 7 asbestosis - progressive. asbestos violations. 27% of dust is asbestos. dust control poor. Glenn Taylor is diagnosed with asbestosis. 36% abnormalities on chest x-rays. Dr. Cairns: do physical exams. Dr. Little: "serious hazard". No to Dr. Knight's study.		
1961	3 dead of asbestosis.	3	
1962	State Report - confidential. no progress. asbestos violations. 2 workers diagnosed w/asbestosis. Bob Graham goes to work at Zonolite.	3	
1963	State Report - confidential. asbestos violations. dust control poor. Grace acquires Z. Knew about asbestos.	6	

Date	THE UNFOLDING OF EVENTS	Dead	Over 10 yrs work % abn
1964	<p>State Report - confidential. asbestos violations. p. 1 "extremely poor housekeeping" p. 2 7x lung cancer risk. p. 3 community hazard. p. 3 exhaust into service bldgs. Dr. Nelson diagnosed John Ludwig w/asbestosis. Dr. Nelson: 26% of 30 abnormal on lung function too. HQ: no to Dr. Nelson's study.</p>	6	46%
1965	<p>Bleich "very sorry record". Bob Graham from mine to garage.</p>	6	
1966	<p>HQ: no to Dr. Spicer study. Grace knew with each breath workers injured.</p>	8	
1967	<p>State order on dust. 5000 lb of asbestos per day into air - rain. Shorty Welch diagnosed w/asbestosis. Larrick letter (attorney for Grace). p.1 cover p.2 "keep them out" State Reports. p.3 Dr. Little: "asbestosis". "severe problem". only persons aware. avoid disclosure. p.4 entire yard area permeated. p.5 any point where a dust condition may exist. p.5 avoid exposure of our own situation. p.7 exhaust into yard. Dr. Little "amazement". keep from union and public. Meeting at Johns-Manville in NJ. get physical exams. tell the workers. 5 standard doesn't protect - Balzer (1967) respirators don't protect.</p>	8	

Date	THE UNFOLDING OF EVENTS	Dead	Over 10 yrs work % abn
1968	US Public Health Service inspection. asbestos violations. poor dust control. HQ: no to PHS death certificates study.	10	54%
1969	Report to Mr. Grace - tremolite asbestos is a "definite health hazard". Deal w/PHS - publish only if favorable to Grace. Trip to Lompoc. - HK, vacuum, baghouse Bob Graham is on list of men to protect. HQ Kostic study - confidential. 45 have lung disease. 92% with 21-25 years work. HQ memo: <i>New Yorker</i> article. meso in housewives and workers.	12	33%
1971	Bureau of Mines inspection - 90 violations. memo: extraordinary hazard. Chart 9, violations of asbestos standard. Grace never did pass an inspection. block chart on violations of 5 standard	14	53%
1972	HQ: no talk policy. Kostic - tell the workers?	14	59%
1973	Bureau of Mines inspection - 71 violations. Chart: inspections outside dry mill-garage. Bob Graham 11 years at Grace. dry mill - on variances. no to medical studies. concealed medical info. concealed state reports. no talk policy. not told workers. by 1973 the disease process is in motion.	16	59%
1975	drymill closed	19	63%
1977	Grace in-house study: Lung cancer 5x; 41% with asbestosis. HQ: no to McMahon study. HQ: "none of us believe that we should proceed as we have in the past, w/o an education program".	23	53%

Date	THE UNFOLDING OF EVENTS	Dead	Over 10 yrs work % abn
1978	HQ: no to Dr. Iron's study proposal. HQ: Dr. Irons will "blow the whistle".	28	58%
1979	Grace told the workers of the asbestos hazard.	30	51%
1980	HQ: Block NIOSH study.	32	47%
1990	Bob Graham retired. Demolition without protection for the workers.	63	
1994	EPA demolition fine \$510,000.	79	
1998	Bob Graham died.	88	

1999 Montana Legislature

About Bill -- Links

SENATE BILL NO. 432

INTRODUCED BY F. THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TIME LIMITATION PROVISIONS UNDER THE OCCUPATIONAL DISEASE ACT OF MONTANA TO ALLOW AN EMPLOYEE WHOSE LAST DAY OF EMPLOYMENT IN MONTANA OCCURRED PRIOR TO JULY 1, 1979, AND WHO DISCOVERED AN INJURY TO FILE A CLAIM FOR BENEFITS UNDER THE ACT; AMENDING SECTION 39-72-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

WHEREAS, the Legislature has declared in 39-71-105, MCA, that for the purposes of interpreting and applying the Occupational Disease Act of Montana, the public policy objective of the Act is to provide, without regard to fault, wage supplement and medical benefits to workers suffering from work-related diseases and to ensure that claimants should be able to speedily obtain benefits with minimal reliance on attorneys and the court; and

WHEREAS, certain work-related disease processes caused by toxic exposures in the workplace, such as asbestosis, have an extended latency period, often many years after initial exposure, that precludes discovery of the disease process for an extended time period; and

WHEREAS, workers last employed in the state of Montana prior to July 1, 1979, are barred by time from receiving occupational disease benefits for work-related latent occupational disease processes contracted in the course and scope of their employment; and

WHEREAS, the Montana Supreme Court, in *Gidley v. W.R. Grace & Company*, 221 M 36, 717 P.2d 21 (1986), ruled that based on an interpretation of occupational disease statutes in effect, a worker last employed prior to July 1, 1979, and whose occupational disease claim was barred by time was entitled to pursue a common law action against the worker's employer; and

WHEREAS, the ruling of the Montana Supreme Court in *Gidley* does not promote the public policy of the Occupational Disease Act of Montana to provide speedy access to benefits, but rather forces workers with work-related latent occupational disease processes to pursue civil claims relying heavily upon the assistance of attorneys and the court system; and

WHEREAS, allowing workers last employed prior to July 1, 1979, the opportunity to pursue claims for occupational disease benefits promotes the expressed public policy of the state by providing occupational disease benefits to workers through a no-fault system in a timely manner with minimal reliance on attorneys and the court system and will not impair the contractual relationship between the workers and their employers that was created by adoption of the Occupational Disease Act of Montana; and

WHEREAS, workers who contracted occupational diseases in the course and scope of their employment have a legitimate and reasonable expectation of receiving benefits.

THEREFORE, it is appropriate that the Legislature pass legislation authorizing workers to retroactively pursue claims for occupational disease benefits for latent occupational disease processes contracted in the course and scope of their employment and to clarify that, contrary to the decision in *Gidley*, occupational disease benefits are the workers' exclusive remedy.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-72-403, MCA, is amended to read:

"39-72-403. Time when claims must be presented -- exception. (1) When Except as provided in subsection (3), when a claimant seeks benefits under this chapter, the claimant's claims for benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the claimant knew or should have known that the claimant's condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, claims for death benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The Except as provided in subsection (3), the department may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years.

(3) (a) A claimant who was last employed prior to July 1, 1979, or a beneficiary of a decedent who was last employed prior to July 1, 1979, and who, within 3 years prior to [the effective date this act] first came to know or first should have come to know that the claimant's or decedent's condition resulted from an occupational disease may file a claim for benefits under this chapter with the department within 1 year of [the effective date of this act].

(b) A claimant who was last employed prior to July 1, 1979, or a beneficiary of a decedent who was last employed prior to July 1, 1979, and who, on or after [the effective date of this act], comes to know or should have come to know that the claimant's or decedent's condition resulted from an occupational disease may file a claim in writing with the department for benefits under this chapter within 1 year from the date the claimant or beneficiary knew or should have known that the claimant's or decedent's condition resulted from an occupational disease.

(4) The time requirement for filing a claim prescribed in subsection (3) may be extended by the department for up to an additional 2 years as provided by subsection (2)."

NEW SECTION. **Section 2. Effective date -- applicability.** [This act] is effective on passage and

approval and applies to claims filed after [the effective date of this act].

NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to claims by workers who were employed prior to July 1, 1979.

- END -

Latest Version of SB 432 (SB0432.01)

Processed for the Web on February 10, 1999 (4:32PM)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted. See the status of the bill for the bill's primary sponsor.

Status of this Bill | 1999 Legislature | Leg. Branch Home
This bill in WP 5.1 | All versions of all bills in WP 5.1

Prepared by Montana Legislative Services
(406)444-3064